

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Gilberto Franco, On behalf of)
himself and all others similarly)
situated,)

Plaintiff-Appellant,)

v.)

Allied Interstate LLC, FKA Allied)
Interstate, Inc.,)

Defendant-Appellee,)
_____)

Dkt. No. 15-4003

**REPLY IN FURTHER SUPPORT OF MOTION TO HOLD INSTANT
APPEAL IN ABEYANCE PENDING OUTCOME OF
PRIOR APPEALS ON SIMILAR ISSUES**

Defendant-Appellee Allied Interstate LLC, FKA Allied Interstate, Inc. (“Defendant”) submits this Reply to Appellant’s Response (ECF No. 36) and in further support of its Motion to hold the instant appeal in abeyance until this Court renders its decisions in two prior and related appeals pending before the Court captioned, *Geismann v. ZocDoc, Inc.*, Case No. 14-3708 and *Lary v. Rexall Sundown, Inc.*, Case No. 15-601. Appellant does not oppose Defendant’s Motion and instead “recognize[s] that given the timing of the cases, the Court may wish to wait for decisions in *Geismann* and *Lary* before briefs are filed in this case.” (ECF No. 36, at 3).

As noted on Defendant's Motion (ECF No. 34), the United States Supreme Court's decision in *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016) is inapposite on the mootness issues because it addressed an expired settlement offer, and not a judgment entered against the plaintiff. On the contrary, *Geismann* and *Lary*, as well as the present case, raise the issue of the effect of the *entry of judgment* on the mootness and class issues. These issues were not directly addressed by the Supreme Court in *Campbell* and remain to be decided by this Court.

While Defendant respectfully maintains that holding the present appeal in abeyance represents the optimal use of this Court's and the parties' resources, Defendant does not object to the Plaintiff's request that he be allowed 30 days after the case is taken out of abeyance to file his opening brief.

Dated: March 4, 2016

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